IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1162 OF 2006.

Ali Akbar Khan. ... Applicant.

Versus.

State of Maharashtra and another. ... Respondents.

Shri R.A.Shaikh for the Applicant.

Shri A.S.Shitole, A.P.P. for the Respondent-State.

CORAM : ABHAY S.OKA, J.

DATED : 22nd December, 2006.

P.C.:

1. The submissions of the learned Counsel for the Applicant and the learned A.P.P. for the State were heard on the last date.

2. The Applicant was prosecuted for offence punishable under sections 354, 509, and 506(II) of the Indian Penal Code. By Judgment and order dated 6th December 2005 passed by this Court in Criminal Application No.7777 of 2005, the case against the Applicant was quashed. Prayer (a) of the said application was granted, which reads thus:

> (a) That this Hon'ble Court may be pleased to call for the records and proceedings of the Criminal Case No.185/P/2002 pending before the 15th Metropolitan Magistrate Court, Mazgaon at Mumbai and after perusing the same

Criminal Case No.185/P/2002 may be quashed and set aside and the Ld.15th Metropolitan Magistrate Court, Mazgaon at Mumbai may be directed to refund Rs.25,000/- to the Applicant which the Applicant has deposited as cash bail in the 15th Metropolitan Magistrate Court, Mazgaon at Mumbai.

3. On the basis of the order on 6th December 2005, the Constituted Attorney of the Applicant applied before the learned trial Judge for refund of Rs.25,000/-. The said application has been rejected by the learned trial Judge. The learned trial Judge held that the signature on the vakalatnama of the Applicant was not tallying with the signature of the Accused (Applicant) appearing on the power of attorney executed by him. This is the ground on which the said application has been rejected.

4. If the Constituted Attorney of the Applicant presents a proper power of attorney covered by section 85 of the Indian Evidence Act, 1872 containing a specific authority to receive the sum of Rs.25,000/-and to give a valid receipt, refund of Rs.25,000/- can be made by an account payee cheque in the name of the Applicant.

5. Hence the application is disposed of by the following order:

i) The impugned order is quashed and set aside.

ii) The trial Court will refund the sum of Rs.25,000/- by an account payee cheque drawn in the name of the Applicant/Accused (Ali Akbar Phir Bhai Khan) to Mrs.Sana Irafan Shaikh or any other holder of a proper Power of Attorney executed by the Applicant/Accused to which provisions of section 85 of the Indian Evidence Act, 1872 are applicable containing proper authority to receive the amount and to issue a valid receipt.

Judge.